

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ANALISE SONSTEBY,

Plaintiff,

v.

VIAL FOTHERINGHAM, LLP,

Defendant.

Case No. 3:17-cv-01837-JR

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Jolie A. Russo issued Findings and Recommendation in this case on May 7, 2019. ECF 30. Magistrate Judge Russo recommended that Defendant's Motion for Summary Judgment (ECF 12) should be granted and the Court should enter judgment dismissing the case.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations,

“the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

Plaintiff filed an objection. ECF 34. Plaintiff argues that Judge Russo erred in concluding that Plaintiff failed to provide initial disclosures to Defendant under Federal Rule of Civil Procedure 26(a), erred in declining to consider allegations outside the pleadings, misinterpreted Or. Rev. Stat. § 100.450(4)(c), and erred in finding no evidence in the record that Plaintiff ever instructed Defendant to apply Plaintiff’s payments towards her current assessments.

As an initial matter, the Court notes that, though Plaintiff objects to Judge Russo’s evidentiary ruling, Judge Russo nonetheless gave Defendant an opportunity to respond to Plaintiff’s evidence, considered it, and did not decide the summary judgment motion solely on that basis. ECF 30 at 8. Because Judge Russo granted Defendant’s motion on other grounds, even if she had erred (which the Court does not believe she did) any such error would be

harmless. The Court has reviewed both parties' arguments regarding the meaning of Or. Rev. Stat. § 100.450(4)(c) and finds that Judge Russo and Defendant provide the most persuasive interpretation of the text of the statute, which is supported by the legislative history. See ECF 30 at 14-15. Finally, the Court agrees with Judge Russo that Plaintiff never provided instructions to Defendant indicating that she wanted her payments applied towards current assessments, and there is no factual dispute that Defendant applied the payments pursuant to the "specific and unambiguous instructions" that it gave Plaintiff in March 2014. ECF 30 at 16.

The Court has reviewed *de novo* those portions of Magistrate Judge Russo's Findings and Recommendation to which Plaintiff has objected, as well as Plaintiff's objections and Defendant's response. The Court agrees with Magistrate Judge Russo's reasoning regarding the lack of evidence and law supporting Plaintiff's claims against Defendant and ADOPTS those portions of the Findings and Recommendation.

For those portions of Magistrate Judge Russo's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Magistrate Judge Russo's Findings and Recommendation, ECF 30. Defendant's Motion for Summary Judgment (ECF 12) is GRANTED.

IT IS SO ORDERED.

DATED this 2nd day of July, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge